

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WIRELESS TELECOMMUNICATIONS BUREAU
Washington, DC**

In the Matter of

GOVNET Licenses LLC

FRN: 0021412366

Application for Modification)	
Microwave License at Bill Williams Mountain)	ULS File No.: 0008680694
to Tusayan Air (Airport))	
Application for New License)	
Microwave License at Tusayan Air (Airport))	ULS File No.: 0008680759
to Bill Williams Mountain)	

**INFORMAL OBJECTION TO GOVNET LICENSES LLC’S APPLICATIONS TO
OPERATE CERTAIN FIXED MICROWAVE FACILITIES**

JC Cullen Inc., DBA Niles Radio Communications (“Niles Radio”) objects to the above-captioned applications (the “Applications”) in which GovNET Licenses LLC (“GovNET”) seeks authority to modify, add and operate fixed microwave facilities at certain frequency paths in Arizona¹. Niles Radio also applied for these paths and urges the Federal Communications Commission (the “Commission”) to reject the GovNET Applications for reasons set forth in this document.

INTRODUCTION

Niles Radio Communications is a Woman Owned, Small Business Telecommunications firm based in Flagstaff, Arizona, founded in 1954. As a regional provider, Niles Radio provides

¹ Niles Radio is filing an Informal Objection to GovNET’s Applications because Part 101 Applications are not subject to a formal petition to deny process. *See* 47 C.F.R. § 1.4; *see also Geodesic Networks, LLC*, Memorandum Opinion and Order and Order on Reconsideration, 29 FCC Rcd 10,429, ¶ 11 n.35 (2014) (“*Geodesic*”).

communications services, including two-way radio systems and network management services to Public Safety and Commercial entities throughout Northern Arizona utilizing more than 56 Mountaintop Radio Sites and Facilities. In 2010, Niles Radio was awarded a grant for > \$2 million from the US Department of Agriculture's Rural Utilities Service Broadband Initiatives Program ("BIP") to fund Niles Radio towards providing internet access and opportunities in Northern Arizona, specifically to unserved and underserved communities and agencies.

Without delay, Niles Radio constructed its network and began providing service to communities such as the Havasupai Tribe in the Grand Canyon, and the Coconino County Sheriff's Office, allowing countywide radio communications across the second largest county in the United States. Niles Radio coordinated frequencies for each of its facilities on a just in time basis, filing for coordination, leases, permits and required certifications without "reserving" excessive or speculative spectrum. Niles Radio's network was quickly and fully constructed within the terms of the BIP grant, allowing Niles Radio to serve and interconnect networks throughout the Northern Arizona region.

Niles Radio's efficient network currently utilizes 50 Radio Paths on 53 Radio Frequencies ("Channels") to cover Northern Arizona, however, Niles Radio, like many other firms in Arizona, is having challenges obtaining required spectrum in a timely manner, to allow for continued community needs.

It has become necessary for Niles Radio to object to the above-captioned in which GovNET seeks authority to modify, add and operate fixed microwave facilities at certain frequency paths in Arizona. Niles Radio also applied for these paths and urges the Commission to reject the GovNET Applications for two reasons.

First, GovNET has been engaged in a practice of hoarding the frequencies through the prior coordination notification (PCN) process for these and other frequencies effectively blocking other potential licensees from using shared spectrum in multiple frequency bands by blanketing critical locations throughout the State of Arizona starting as early as early as 2011 and the frequencies referred to in this petition as early as 2015, yet has never applied for licenses so that it could build out the frequencies. GovNET only filed the application for the frequencies in question that is the subject of this this petition after Niles Radio, upon determination of immediate need for such spectrum, and through exhaustive research along with its coordination provider (Comsearch) determined that these were the only available frequencies at these locations, began the coordination process for these frequencies. Niles Radio notified GovNET, through the PCN process via Niles Radio’s coordination agent, Comsearch, that Niles Radio has an immediate need and requested that GovNET relinquish the channels for immediate use, representing only a small number of the frequencies GovNET is ‘holding’. GovNET refused, even though the Commission has stated that **“an applicant that reserved a frequency by PCN must release that frequency to another applicant that claims priority by showing that it needs the channel immediately and that no alternative frequency is available”**.² In spite of this rule, GovNET refuses to release these channels and instead seeks to reserve them in perpetuity, improperly preventing other applicants and licensees with an immediate need from putting these channels to use. GovNet’s actions here are evidence of efforts to reserve growth or prospective channels, which the Commission’s rules seek to prevent.³

² See *County of San Bernadino and LT-WR, LLC*, Memorandum Opinion and Order, 33 FCC Rcd 7509, ¶ 3 (2018) (“*San Bernadino*”) (citing 47 C.F.R. § 101.103(d)(2)(xii)).

³ See 47 C.F.R. § 101.103(d)(2)(xii).

Second, GovNET has failed to follow the Commission's frequency coordination procedures. The Commission's rules require GovNET to either disclose frequency conflicts in its applications or include a statement reflecting that it could not resolve the frequency conflicts and the reasons for its unwillingness or inability to do so.⁴ GovNET has failed to do either, rendering its applications defective and incomplete.

It is for these reasons, that the Commission should dismiss GovNET's Applications.

BACKGROUND

On May 27, 2019, Niles Radio retained its frequency coordination agent, Comsearch, to identify available Microwave Operational Fixed (OF) channels for a specific path in Arizona, specifically for the path from Bill Williams Mountain to Topocoba Hilltop, that may be used to provide immediate relief and access to Niles Radio customers such as the Havasupai Tribe, in support of their access requirements granted in the Memorandum and order of May 16, 2019 (DA 19-424).⁵ Through this process Comsearch was unable to identify appropriate un-reserved spectrum for this use. However, Comsearch was able to determine that GovNET had circulated PCN's in the *years* earlier (since 2015) that were continuously renewed for channels representing the entirety of the unlicensed 6GHz bands, and the entirety of the 7 GHz band that would support Niles Radio's proposed operations. Niles Radio was seeking only two (2) adjacent channels for Horizontal and Vertical (S) use for each end of this path, the GovNET PCN's in the 7 GHz band represented the entirety of the band, some 200MHz, and both Horizontal and Vertical polarities.⁶

⁴ See *San Bernadino* ¶ 20 (citing *Applications of Questar InfoComm, Inc.*, Order, 15 FCC Rcd 3684 (1999)).

⁵ The Havasupai Tribe application for EBS Spectrum use, Memorandum Opinion and Order DA 19-424, FCC ULS File 000818189594

⁶ §101.147 (I) 6875 to 7125MHz 25MHz Authorized Bandwidth. Frequency Assignments represented by 4 ea. paired 25MHz wide duplex channels in both Horizontal and Vertical polarity over a bandwidth of 100MHz paired. Niles Radio's Application represents only 2 paired channels with both polarities.

The channels had not been licensed by GovNET and were not the subject of any pending license application filed by GovNET, even though the initial GovNET PCN's were circulated in 2015. Because the channels are not being used and are the only channels available to serve Niles Radio's immediate needs, Niles Radio authorized Comsearch to commence the process to obtain licenses for these channels.

On June 3, 2019, Niles Radio, through Comsearch, circulated a PCN on an expedited timeframe proposing to use frequencies 7087.5(S) / 6937.5(S) and 7112.5(S) /6962.5(S) representing channels 3 and 4 of the 7GHz 25MHz Channel Plan, per FCC rule 101.147 Frequency Assignments for the path from Bill Williams Mountain to Topocoba Hilltop.⁷

In accordance with accepted procedures for Prior Coordination Notification, Comsearch sent the Niles Radio PCN to all potentially affected operators, including GovNET, that were licensed, had applied for licenses, or had circulated PCN's describing potentially affected operations in the relevant areas, including the unused, unlicensed and unconstructed GovNET paths. Comsearch, on behalf of Niles Radio, set a June 17, 2019 deadline for parties to respond.⁸

On June 6, 2019, MicroNet, coordinator for GovNET, Comsearch, coordinator for Niles Radio, an objection to Niles Radio's PCN, but did not at that time make any effort to mitigate the disputed frequencies or paths. MicroNet and GovNET did not wait for any response from Comsearch.

On the same day, June 6, 2019, just 3 days after Comsearch served potentially affected entities including GovNET with the Niles Radio PCN, GovNET filed applications for licenses for

⁷ See Comsearch Adaptive Modulation Prior Coordination Notice Job Number 190603COMSDS02 (June 3, 2019) ("NilesRadioPCN") attached as Exhibit 1.

⁸ See Comsearch Supplemental Showing to Niles Radio PCN, attached as Exhibit 2.

the disputed frequencies (channels)⁹ as well as a filing at the same Bill Williams Site¹⁰ that had apparent effect and intention of precluding Niles Radio from using the channels in question, but additionally would prevent Niles Radio from selecting any other potentially available frequency, in any combination, in the Lower and Upper 6GHz bands, as well as the 7GHz band, that would meet Niles Radio's immediate needs and obligations.

GovNET further submitted a Supplemental Showing to its applications stating that coordination was completed and noting that "the results of the [frequency coordination] study indicate that no unacceptable interference will result with existing, *proposed* or prior coordinated radio facilities". GovNET also attached a certification that "all paths were properly prior coordinated with Adaptive Modulation using all of the modulations listed in the application". In both of these documents, GovNET failed to disclose the lack of coordination with Niles Radio's PCN.

On June 12, 2019, Comsearch requested that GovNET relinquish their clients reserved channels since 2015, MicroNet denied Comsearch's request, without further discussion, even though they were advised that Niles Radio has an immediate need for these channels.

In accordance with accepted procedures and policies of the Commission, Niles Radio will file its application at the end of the Prior Coordination Period on June 17, 2019, for the Disputed Frequencies. Niles Radio's coordinator, Comsearch, will correctly identify the frequencies that conflict with the GovNET filing.

⁹ ULS Filing 0008680694

¹⁰ ULS Filing 0008680759

Niles Radio is requesting that, the Commission deny GovNET's License Applications and Modifications posing the following Arguments for this action.

ARGUMENT

I

GOVNET WAS REQUIRED TO RELINQUISH THE FREQUENCIES HELD FOR SPECULATIVE, PROSPECTIVE OR WAREHOUSING PURPOSES

The Commission's frequency coordination procedures assume that an operator will file a license application soon after circulating a PCN proposing OF or CCOF operations in a given area.¹¹ The Commission has permitted some flexibility to reserve "**growth channels**" for future use, but has made clear its expectation that such channels would be reserved only for "**months**" before filing a license application, not **years**.¹² Furthermore, to prevent parties from reserving frequencies indefinitely without using them, Section 101.103(d)(2)(xii) provides that "any frequency reserved by a licensee for future use in the bands subject to this part **must be released** for use by another licensee, permittee, or applicant upon a showing that it requires an additional frequency and cannot coordinate one that is not reserved for future use."¹³

GovNET was required to relinquish these channels to Niles Radio or any other applicant "upon demonstration of need."¹⁴ Prior to filing the Niles Radio Applications, Niles Radio, through Comsearch and the PCN Process, informed GovNET that it has an immediate need for the frequencies and formally requested that GovNET relinquish the Disputed Frequencies.

¹¹ 47 C.F.R. § 101.103(d)(xi).

¹² See *Geodesic* ¶ 16 (requiring party to relinquish frequencies under Section 101.103(d)(2)(xii) after holding on to them for 2.5 years); see also *McCaw Cellular Communications, Inc. Petition for Rulemaking*, Report and Order, 11 FCC Rcd 13,449, ¶ 64 n.102 (1996).

¹³ 47 C.F.R. § 101.103(d)(2)(xii) (emphasis added).

¹⁴ *Geodesic* ¶ 16.

Additionally, at each of the locations in Niles Radio's Applications, Niles Radio owns the Infrastructure, Tower, Shelters, Ground Lease and all ancillary equipment for operation of the proposed systems, in fact the Applications are for an Expansion of provided services on networks that are fully constructed, to meet immediate need and the additional spectrum will be constructed immediately upon licensing.

This in and of itself gives the appearance of Speculative Frequency coordination rather than the need for growth, expansion or to meet any present or perceived need for the spectrum channels in question.

Niles Radio's need is immediate, bandwidth is requested by Niles Radio customer The Havasupai Tribe, relating directly to the need to fulfill bandwidth requirements in the rural Havasupai Supai village located in the Grand Canyon, which is the subject of Commission authorized actions, services and license issued under Federal Communications Commission Memorandum and Order DA 19-424 of May 16, 2019¹⁵. As Niles Radio's coordinator, Comsearch, was unable to coordinate another set of frequencies, the requested frequencies were the only available solution, the actions of GovNET have precluded any further search.

¹⁵ See *Havasupai Tribe*, Memorandum and Order DA 19-424 attached as an addendum

Upon Niles Radio making this showing, any right of GovNET to use the Disputed Frequencies no longer existed.¹⁶ GovNET was required to release the Disputed Paths and or Frequencies based on its longstanding failure to use them or justify any immediate need for them.¹⁷

GovNET's Applications rest entirely on the erroneous assumption that GovNET remains entitled to use the Disputed Channels by virtue of the PCNs it circulated in 2015 and continually renewed thereafter. This conduct appears to be part of a larger pattern by GovNET of circulating PCNs, continuously renewing them, and warehousing frequencies for future use, Niles Radio does not believe that Niles Radio is the only entity affected by GovNET's actions, however, this is the first case where Niles Radio has found absolutely no means to "work around" the issue and regrets that this Informal Objection appears to be the only remedy that remains.

Indicating a pattern of behavior and process, according to Comsearch's PCN tracking database, GovNET currently holds 118 proposed paths with growth channels, the earliest of which were coordinated in 2010. Telink Networks SW LLC, an entity that appears to be owned by GovNET's owner Pat Barringer, currently holds proposed paths with growth channels, the earliest of which were coordinated in 2008. Meanwhile, GovNET has prioritized building other facilities.

The Wireline Telecommunications Bureau has determined that allowing an entity to "hang on to frequencies after doing nothing" is inconsistent with the spirit of the Commission's rules.¹⁸

¹⁶ See *Asia Skylink, Inc.*, Memorandum Opinion and Order, FCC Files Nos. 730216, 730217, 736359, and 736414; DA 99-2965, ¶ 14 (Dec. 23, 1999) (applicant who reserved channels for six years was required to relinquish channels); see also *Geodesic* ¶¶ 16-17.

¹⁷ *Id.*; see also 47 C.F.R. § 101.103(d)(2)(xii).

¹⁸ *Geodesic* ¶ 18.

The Commission should not permit or allow GovNET to cut off the rights of other applicants by reserving these channels indefinitely for future use.¹⁹

GovNet did not properly file FCC applications in good faith knowing of the conflict with Niles Radio's PCN which was issued *prior* to GovNet's filing of their applications. This is evidenced by the omission of any conflict with Niles Radio on the Supplemental Showing included in all the filings.

The FCC has allocated spectrum under CFR47, Part 101 for private, commercial and government agencies to utilize and cooperatively share whenever possible. Warehousing most and in some cases all available long-haul spectrum in the general area does not fall within the spirit of the Prior Coordination process. Using GovNet's argument of reserving spectrum for long-term future expansion, entities such as Niles Radio or very large entities such as Verizon Wireless could have done something similar in this market as well as many others, but this does not serve the interest of the community, is not the common and accepted practice, is not in the spirit of the Laws, Rules and Regulations of the Commission, is not in the Public Interest, and therefore, not an acceptable practice.

II GOVNET FAILED TO COMPLY WITH THE COMMISSION'S REQUIREMENT TO DISCLOSE THE CONFLICT RELATING TO THE DISPUTED CHANNELS

Prior to filing an application, applicants must certify that they have made every effort to resolve competing claims. Section 101.103(d)(1) provides:

Proposed frequency usage must be prior coordinated with existing licensees,

¹⁹ See *id.* ¶ 17 (finding that Auburn failed to show an immediate need where it filed 122 applications for other new or modified facilities instead of filing an application for the coordinated path in dispute).

permittees and applicants in the area, and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposal in terms of frequency interference on active channels, applied-for channels, ***or channels coordinated for future growth***. Coordination must be completed ***prior to filing an application for regular authorization***, or a major amendment to a pending application, or any major modification to a license.²⁰

And Section 101.103(d)(2)(vii) provides that all unresolved technical problems must be disclosed in the final application, as well as the reason why the problem cannot be resolved internally.

GovNET failed to disclose the conflict with Niles Radio relating to the Disputed Paths or provide any reason for failing to resolve the conflict, thereby failing to comply with the Commission's frequency coordination policies. Niles Radio circulated its expedited PCN on June 3, 2019. Just three days later, after years of inaction, GovNET filed its Applications knowing that these paths were in dispute. In the Supplemental Showing attached to GovNET's Applications, Micronet states:

Pursuant to Part 101.103(d) of the FCC Rules and Regulations, a frequency coordination study was conducted by Micronet Communications, Inc. for the following proposed microwave paths. ***The results of the study indicate that no unacceptable interference will result with existing, proposed or prior coordinated radio facilities.***

Micronet makes it clear that, on behalf of GovNET, they reviewed Niles Radios June 3 PCN and recognized the dispute. But GovNET moved forward with filing the Applications without attempting to resolve the dispute or explaining why it could not do so.

Despite the clear acknowledgement of the dispute, GovNET failed to make any reference to the conflicting paths in its Applications. GovNET's failure to disclose the interference as

²⁰ 47 C.F.R. § 101.103(d)(1) (emphases added).

required by the Commission's rules render its coordination incomplete and its Applications unacceptable for filing.²¹

It is inevitable that GovNET will refer to the Geodesic decision, cited throughout this Informal Objection, as reinforcing GovNET's position regarding the interpretation of need, and that GovNET having filed first is evidence of GovNET being compliant with Geodesic...

"We interpret the filing of Geodesic's application for a frequency as a demonstration of need. If one party is willing to file an application and start the clock ticking on the construction requirement, and another party has not, then the former has shown a greater need for the frequency. Here, Geodesic properly filed an application for the frequencies before Auburn filed such an application"....

...However, GovNET, having not followed accepted PCN procedures, and the use of the deficient PCN used to file the Application(s) in a manner not compliant with the Commission's rules render its coordination incomplete and its Applications unacceptable for filing.

GovNet did not properly file FCC applications in good faith knowing of the conflict with Niles Radio's PCN which was issued prior to GovNet's filing of their Applications. This is evidenced by the omission of any conflict with Niles Radio on the Supplemental Showing included in all the filings.

²¹ Although GovNET filed its Applications on June 6, before Niles Radios June 16 Applications, GovNET's Applications are defective and therefore cannot be prioritized over Niles Radio's. "[A]n application lacking coordination cannot prevail over an application for which coordination was accomplished." *San Bernadino* ¶ 20.

SUMMARY

GovNET may express that it is challenging to obtain authorizations due to delays in “rolling out” a business plan, however, all Licensees face challenges resulting in delays in construction, difficulties in timing coordination’s, applications, and construction, however, squatting on frequencies for years and sometimes decades is not an acceptable solution nor within the spirit of the Commissions rules and regulations.... GovNET’s improper and abusive use of the PCN process to the end of reserving all CFR 47 Part 101 Spectrum in a given region to the exclusion of all others, is not an acceptable solution.

Complicating frequency coordination in the region, the sites in these PCN’s and Applications are located in a sparsely populated region, built up mountaintop sites that are a considerable distance apart, without any other reasonable solution to provide service using short haul Microwave solutions, and without options to construct any other facilities at other locations. The Topocoba Hilltop site, owned and operated by Niles Radio, was specifically sited and constructed in 2011 under a BIP Program Grant²², at the only available location some 69 miles north of Bill Williams Mountain, in the only reasonable location that provides a relay, to access the Supai village in the Grand Canyon, arguably one of the most isolated villages in the contiguous 48 States. This site was constructed with cooperation of the Havasupai Tribe, and is in full compliance with Section 7 of the Endangered Species Act (ESA) and ready for construction of the additional facilities.²³ The actions of GovNET serve to disadvantage this community and others within the region.

²² US Department of Agriculture (USDA) RUS Broadband Initiative Project #6206 ARIZONA 1112-A39

²³ US Department of the Interior (USDA) Fish and Wildlife Service AESO/SE 22410-2008-TA-0154 March 16, 2011

CONCLUSION

For the foregoing reasons, GovNet's Applications should be denied, or at the very least modified, acknowledging the Niles Radio PCN and Niles Radio's immediate need for accommodation and reach a reasonable compromise and allowance to access the requested yet small portion of the CFR 47 Part 101 Shared Spectrum with other licensees, including GovNET.

Respectfully Submitted,

/s/Kelly E. Cullen CEO

/s/ John M. Lindsey Sr. Engineer

Niles Radio Communications

1602 N. East St.

Flagstaff, AZ 86004

Phone: (928)774-4621

Microwave Path Data Sheet
COMSEARCH

19700 Janelia Farm Boulevard, Ashburn, VA, 20147
(703)636-5234 www.comsearch.com
Job Number: 190603COMSDS02

Date: 06/03/2019

Adaptive Modulation Prior Coordination Notice

One or more paths in this Prior Coordination Notice (PCN) use microwave radios with Adaptive Modulation. These paths can be identified by a numerical superscript notation immediately following the Radio Code on the path data sheet.

The superscript notation can be cross referenced to the corresponding table(s) below to identify the various modulation modes in which the microwave path will operate.

(1) Master Radio Code: X07064 - Cambium Networks, LTD
Pages: 1

Radio Code	Model	Model Description	Emission Designator	Modulation	Loading (Mbps)	Stability (%)	Coordinated Power (dBm)
TEDX66	PTP07820C-V2	PTP 820C-ALL-OUTDOOR	25M0D7W	2048 QAM	1 CH DIG 212.4	0.001	22.0
TEDX67	PTP07820C-V2	PTP 820C-ALL-OUTDOOR	25M0D7W	1024 QAM	1 CH DIG 198.0	0.001	24.0
TEDX68	PTP07820C-V2	PTP 820C-ALL-OUTDOOR	25M0D7W	1024 QAM	1 CH DIG 186.4	0.001	24.0
TEDX69	PTP07820C-V2	PTP 820C-ALL-OUTDOOR	25M0D7W	512 QAM	1 CH DIG 175.5	0.001	24.0
TEDX70	PTP07820C-V2	PTP 820C-ALL-OUTDOOR	25M0D7W	256 QAM	1 CH DIG 158.9	0.001	26.0
TEDX71	PTP07820C-V2	PTP 820C-ALL-OUTDOOR	25M0D7W	128 QAM	1 CH DIG 139.5	0.001	26.0
TEDX72	PTP07820C-V2	PTP 820C-ALL-OUTDOOR	25M0D7W	64 QAM	1 CH DIG 115.6	0.001	26.0
TEDX73	PTP07820C-V2	PTP 820C-ALL-OUTDOOR	25M0D7W	32 QAM	1 CH DIG 94.1	0.001	26.0
TEDX74	PTP07820C-V2	PTP 820C-ALL-OUTDOOR	25M0D7W	16 QAM	1 CH DIG 71.3	0.001	27.0
TEDX75	PTP07820C-V2	PTP 820C-ALL-OUTDOOR	25M0D7W	8 PSK	1 CH DIG 52.3	0.001	28.0
TEDX76	PTP07820C-V2	PTP 820C-ALL-OUTDOOR	25M0G7W	QPSK	1 CH DIG 34.9	0.001	28.0

Microwave Path Data Sheet
COMSEARCH

Page 1 of 1

19700 Janelia Farm Boulevard, Ashburn, VA, 20147
(703)636-5234 www.comsearch.com

PCN Date: 06/03/2019

Job Number: 190603COMSDS02

New Path

RCN Number: 19060361

Administrative Information

BILL WILLIAM AZ

City/County Williams/Coconino
Status / License Basis Engineering Proposal / PRIMARY OPERATION
Call Sign WQUR435
Licensee Code NILRAD
Licensee Name Niles Radio Communications
Radio Service / Station Class CF -- Point-to-Point Microwave, Common Carrier

TOPOCOBA REV AZ

/Coconino
Engineering Proposal / PRIMARY OPERATION
WQUR432
NILRAD
Niles Radio Communications
FXO -- Fixed

Site Information

Latitude (NAD 83)	35 ° 11' 59.0" N	36 ° 10' 19.0" N
Longitude (NAD 83)	112 ° 12' 15.0" W	112 ° 30' 21.0" W
Ground Elevation (m/ft-AMSL)	2811.17 / 9223.0	1903.92 / 6246.5
Antenna Structure Registration #		
Path Azimuth (°)	345.882	165.706
Path Length (km / miles)	111.274 / 69.142	

Transmit Antenna

62654M

Manufacturer Cambium Networks, LTD
Model N060080L007A
Gain(dBi) / Beamwidth(°) / Tilt(°) 42.0 / 1.30 / -0.84
Centerline (m / ft - AGL) 30.00 / 98.4

62655M

Cambium Networks, LTD
N060080L008A
44.0 / 1.00 / 0.09
30.00 / 98.4

Receive Antenna

Same As Transmit

Manufacturer
Model
Gain (dBi) / Beamwidth (°)
Centerline (m / ft - AGL)

Diversity Receive Antenna

Manufacturer
Model
Gain (dBi) / Beamwidth (°)
Centerline (m / ft - AGL)

Radio Information

X07064¹

Manufacturer Cambium Networks, LTD
Model PTP07820C-V2
Model Description PTP 820C-ALL-OUTDOOR 2048QAM-QPSK (MAX)
Emission Designator / Modulation 25M0D7W 2048 QAM
Loading 1 CH DIG 212380.000
Stability (%) 0.001

Nominal	Coordinated	Maximum
	28.0	
	-37.1	
	69.6	

Power (dBm)
Received Level (dBm)
EIRP (dBm)
Fixed Loss: Tx / Common (dB) 0.0 / 0.4
Free Space Loss (dB)

X07064¹

Cambium Networks, LTD
PTP07820C-V2
PTP 820C-ALL-OUTDOOR 2048QAM-QPSK (MAX)
25M0D7W 2048 QAM
1 CH DIG 212380.000
0.001

Nominal	Coordinated	Maximum
	28.0	
	-37.1	
	71.6	

0.0 / 0.4

Transmit Frequencies (MHz)

7087.5000S(3)

7112.5000S(4)

6937.5000S(3)

6962.5000S(4)

June 3, 2019

Re: Niles Radio Communications
Job Number: 190603COMSDS02
BILL WILLIAM - TOPOCOBA REV, AZ.
7.0 GHz DIGITAL MICROWAVE SYSTEM
Prior Coordination Notification/New Paths

*** Expedited Response Requested by June 17, 2019 ***

Dear Frequency Coordinator:

COMSEARCH has completed an interference analysis for the system described in the attached documentation. Our analysis indicates that the proposed system meets industry accepted interference criteria with your system.

In accordance with FCC Rule Part 101.103(d), we are providing you with the technical parameters of the proposed system for your review. Please include the job number referenced above in your response. DUE TO THE URGENT NATURE OF THIS COORDINATION, WE WILL ASSUME THAT YOU DO NOT OBJECT TO THIS PROPOSAL IF A RESPONSE IS NOT RECEIVED BY June 17, 2019.

If you have any questions, or require additional information, please contact me at (703) 636-5234.

Sincerely,

COMSEARCH

Dong Shin
Senior MW Engineer
dshin@comsearch.com

Enclosure(s)

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
THE HAVASUPAI TRIBE)	File No. 0008189594
)	
For a New Educational Broadband Service Station)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 16, 2019

Released: May 16, 2019

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On April 24, 2018, the Havasupai Tribe (the Havasupai or the Tribe) filed an application for permanent authorization to use four Educational Broadband Service (EBS) channels within a 35-mile geographic service area centered near Supai, Arizona.¹ In this *Memorandum Opinion and Order*, subject to certain conditions, we grant the application and necessary waivers.

II. BACKGROUND

2. *2500-2690 MHz Band Generally.* In developing regulatory policies in the 2500-2690 MHz band over the last several decades, the Commission has been cognizant of this band's potential to host a variety of services. In 1963, the Commission established the Instructional Television Fixed Service (ITFS) in the 2500-2690 MHz band,² envisioning that it would be used for transmission of instructional material to accredited public and private schools, colleges and universities for the formal education of students.³ In 1983, in response to the demand for additional spectrum for delivery of video entertainment programming to subscribers, the Commission re-allotted eight ITFS channels (the E and F channel blocks) and associated response channels for use by the Multipoint Distribution Service (MDS).⁴ In

¹ The application was filed with requests for waiver of the Commission's filing freeze on new EBS applications and of Section 1.913(b) of the Commission's rules to permit manual filing of the application. *See* The Havasupai Tribe: Application for Educational Broadband Service ("EBS") License, File No. 0008189594 (Application) and Request for Waiver (Waiver Request) (filed Apr. 24, 2018).

² *See Amendment of Parts 2 and 4 of the Commission's Rules and Regulations to Establish a New Class of Educational Television*, Report and Order, 39 FCC 846 (1963), *recon. denied*, 39 FCC 873 (1964) (*ETV Decision*).

³ *See Amendment of the Commission's Rules With Regard to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service; and Applications for an Experimental Station and Establishment of Multi-Channel Systems*, Report and Order, 48 Fed. Reg. 33873, 33875, para. 9 (1983) (1983 R&O) (citing *ETV Decision*, 39 FCC 846, 852-853, para 25).

⁴ *See Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in Regard to Frequency Allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service*, Report and Order, 94 FCC 2d 1203 (1983) (*First Leasing Decision*).

conjunction with this re-allotment, the FCC permitted ITFS licensees to lease “excess capacity” on their facilities to commercial entities.⁵

3. In April 2003, the Commission proposed new technical rules and a new band plan for ITFS and MDS spectrum (changing the service names to EBS and Broadband Radio Service (BRS), respectively), and imposed a freeze on all applications for new BRS and EBS licenses.⁶ Subsequently, the Commission lifted the freeze on applications for new BRS licenses, but maintained it for applications for new EBS licenses.⁷ In June 2004, the Commission adopted new rules fundamentally restructuring the 2500-2690 MHz band, but left the EBS filing freeze in place.⁸ In 2008, the Commission sought comment on how to license unassigned EBS spectrum.⁹

4. Last year, the Commission issued a notice of proposed rulemaking proposing “to allow more efficient and effective use of [the 2.5 GHz] band by providing greater flexibility to current EBS licensees as well as providing new opportunities for additional entities to obtain unused 2.5 GHz spectrum to facilitate improved access to next generation wireless broadband.”¹⁰ In the proceeding, the Commission sought comment on establishing one or more local priority filing windows for unassigned 2.5 GHz spectrum, following which any remaining 2.5 GHz spectrum would be made available for flexible use via competitive bidding.¹¹ The Commission also sought comment on other approaches to rationalizing and opening the 2.5 GHz band for more productive and intensive use.¹²

5. *The Havasupai Tribe Application.* According to the Tribe’s waiver request, Arizona’s indigenous Havasu Baaja (known today as the “Havasupai”) are the traditional guardians of the Grand Canyon.¹³ The Havasupai Reservation, established in 1880 and enlarged in 1975, consists of 188,077 acres of plateau country, dissected by canyons characteristic of the Grand Canyon and Colorado River region.¹⁴ The village of Supai has been home to the Tribe for over 1,000 years.¹⁵ Because of its remote

⁵ *Id.* at 1206-07, para. 4.

⁶ *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 18 FCC Rcd 6722, 6811, para. 226, 6825, para. 260 (2003) (*NPRM and MO&O*).

⁷ *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 Bands, Second Memorandum Opinion and Order*, 18 FCC Rcd 16848, para. 1 (2003) (*Second MO&O*).

⁸ *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O and FNPRM*).

⁹ *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling*, 23 FCC Rcd 5992, 6060-68, paras. 180-204 (2008) (*Second FNPRM*).

¹⁰ *Transforming the 2.5 GHz Band*, Notice of Proposed Rulemaking, 33 FCC Rcd 4687, 4687-88, para. 1 (2018) (*2.5 GHz NPRM*).

¹¹ *Id.* at 4695-4702, paras. 25-51.

¹² *Id.* at 4704-05, paras. 58-62.

location, all supplies must travel to the village by foot, horseback, or helicopter.¹⁶

6. On February 28, 2018, the Wireless Telecommunications Bureau granted the Tribe special temporary authority (STA) to use the four A group EBS channels in Supai to offer LTE broadband service.¹⁷ The Tribe states that the system deployed pursuant to this authority provides the only reliable high-speed wireless broadband in Supai.¹⁸ The Tribe activated the system days after grant of STA, and the system offers download speeds between 1.2 and 32 Mbps throughout the village.¹⁹ The Tribe has distributed broadband access equipment to its Early Head Start building and the homes of 12 teachers in the village, who use the system to obtain necessary training.²⁰ Current users of the system include a teacher obtaining a Master's degree, a Head Start worker obtaining required certification, and a tribal member working on an Associates' degree.²¹ In addition, the Tribe is distributing devices to K-12 students.²²

7. On April 24, 2018, the Tribe filed the instant Application, seeking permanent authority for the four A group EBS channels that it has been using under the STA, and asking for waiver of the EBS filing freeze and the electronic filing requirement of Section 1.913(b).²³ In its filing, the Tribe indicates that it will "use its EBS-based wireless broadband system solely for educational purposes, without leasing of excess capacity for commercial use."²⁴

8. With its Application, the Tribe provided letters of support from the Honorable Tom O'Halleran, Member of Congress; members of the Arizona state legislature; a member of the Coconino County Board of Supervisors; the President of Northern Arizona University; the Chairwoman and a member of the Havasupai Tribal Council; and Havasupai Head Start.²⁵ The Tribe's Application was listed on public notice as accepted for filing on May 2, 2018.²⁶ No petitions to deny or other oppositions were filed.

¹³ Waiver Request at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Waiver Request at 2.

¹⁷ Call Sign WRAT818, File Number 0007981254. The STA has been renewed twice (File Nos. 0008151270 and 0008429342), and currently expires on May 18, 2019.

¹⁸ Waiver Request at 3.

¹⁹ *Id.* at 3.

²⁰ *Id.* at 4.

²¹ *Id.* at 4-6.

²² *Id.* at 3.

²³ *Id.* at 1, 8. Section 1.913(b) of the Commission's Rules states in relevant part that "all applications and other filings using FCC Forms 601 through 608 or associated schedules must be filed electronically in accordance with the electronic filing instructions provided by ULS." 47 CFR § 1.913(b).

²⁴ *Id.*

²⁵ Application.

²⁶ See *Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing*, Report No. 13147, Public Notice, (rel. May 2, 2018) at 3.

III. DISCUSSION

9. As noted, the Tribe seeks both a waiver of the filing freeze on new EBS applications and a waiver of the electronic filing requirement for such applications contained in Section 1.913(b) of the Commission's rules, to provide it permanent authorization to use four A group EBS channels to operate an LTE network for the provision of broadband educational services.²⁷ The Commission may grant a request for a waiver if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²⁸ As discussed below, we conclude that the Tribe has met the second prong of the waiver standard with respect to both of its requests, and accordingly, we grant its Waiver Request, subject to the conditions outlined below.

10. We conclude that application of the filing freeze would be inequitable and contrary to the public interest under the unique circumstances presented by the Havasupai. Without access to EBS spectrum, because of its isolated, remote geographic location, the Tribe faces substantial challenges to providing educational content to all of the members of its school community, including underserved students, faculty and administrators.²⁹ Given the urgent need for broadband service on the reservation, and the fact that denying the waiver would require the Tribe to turn off the service that its people have already come to rely on, we do not believe it is appropriate to ask the Tribe to wait until the Commission makes spectrum available pursuant to mechanisms that may be adopted in the 2.5 GHz proceeding. We therefore conclude that the Tribe has justified a waiver of the EBS filing freeze under the second prong of the waiver standard.

11. To ensure that grant of the requested waivers will produce the public interest benefits we anticipate, we will place three conditions on the waiver grant, all of which are consistent with conditions imposed on prior grants of waivers of the EBS filing freeze.³⁰ First, the Tribe's license shall include a condition that its Geographic Service Area (GSA) shall not include any area within the GSA of any previously licensed co-channel EBS station.³¹ Second, to ensure that the licensed spectrum is quickly put to use to serve a community that lacks broadband alternatives, and consistent with the Tribe's representations that it has rapidly deployed broadband service pursuant to the existing STA,³² we will require the Tribe to demonstrate substantial service pursuant to Section 27.14(o) of the Commission's

²⁷ Waiver Request at 1.

²⁸ 47 CFR § 1.925(b)(3).

²⁹ Waiver Request at 2-3.

³⁰ See, e.g., *Application of The Board of Trustees of Northern Michigan University For a New Educational Broadband Service Station*, Memorandum Opinion and Order, 23 FCC Rcd 11832 (WTB 2008); *Application of The Nisqually Indian Tribe*, Memorandum Opinion and Order, 28 FCC Rcd 15569 (WTB BD 2013); *The Board of Trustees of Northern Michigan University*, Memorandum Opinion and Order, 28 FCC Rcd 15576 (WTB BD 2013); *The Board of Trustees of Northern Michigan University*, Memorandum Opinion and Order, 28 FCC Rcd 15583 (WTB BD 2013); *Application of The Board of Trustees of Northern Michigan University For a New Educational Broadband Service Station*, Memorandum Opinion and Order, 31 FCC Rcd 3371 (WTB BD 2016).

³¹ The Tribe has not requested authorization for any EBS spectrum already authorized to another entity. Waiver Request at 10.

³² Waiver Request at 3.

Rules within two years from the date its license is granted by the Bureau.³³ Third, we adopt as a license condition the Tribe's voluntary commitment not to lease its spectrum.³⁴

12. With respect to the electronic filing requirement contained in Section 1.1913(b) of the Commission's Rules,³⁵ we observe that the Commission's electronic Universal Licensing System (ULS) currently is not configured to accept applications such as the one submitted by the Tribe. We therefore conclude that, in light of these circumstances, application of the rule would be inequitable and contrary to the public interest because it would be unfair to reject an application for failure to file electronically when electronic filing capability is not available. We therefore grant the Tribe a waiver to permit manual filing of its Application.

IV. CONCLUSION AND ORDERING CLAUSES

13. For the reasons discussed above, we grant the Tribe's requests for waiver of (1) the filing freeze that was imposed by the Commission on new EBS applications in the Commission's April 2003, *NPRM and MO&O*, and, (2) the electronic filing requirement in Section 1.1913(b) of the Commission's Rules. We also direct the Broadband Division to process the Tribe's Application in accordance with the requirements set forth in this *Memorandum Opinion and Order* and the Commission's rules.

14. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended 47 U.S.C. § 154(i), and Section 1.925(b)(3) of the Commission's Rules, 47 CFR § 1.925(b)(3), that the request for waiver of the filing freeze filed by The Havasupai Tribe in connection with File No. 0008189594 IS GRANTED.

15. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309 that the Broadband Division, Wireless Telecommunications Bureau SHALL PROCESS File No. 0008189594 in accordance with this *Memorandum Opinion and Order* and the Commission's Rules.

16. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309 that the following conditions SHALL BE IMPOSED on any authorizations issued to the Havasupai Tribe as a result of the application it has filed:

The Geographic Service Area of this station shall not include any area within the GSA of any previously licensed co-channel EBS station.

The Havasupai Tribe shall demonstrate that it has met the substantial service requirement contained in 47 CFR § 27.14(o) within two years after the grant of their application.

³³ 47 CFR § 27.14(o).

³⁴ See Waiver Request at 1. We note that the 2.5 GHz *NPRM* proposed to eliminate restrictions on leasing imposed on licenses issued pursuant to a waiver of the filing freeze. 2.5 GHz *NPRM*, 33 FCC Rcd at 4694, para. 21. If the Commission ultimately adopts that proposal, this condition shall be null and void.

³⁵ See 47 CFR § 1.913(b).

The Havasupai Tribe shall not lease any spectrum associated with this license to another entity.

17. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Donald K. Stockdale, Jr.
Chief, Wireless Telecommunications Bureau